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11 Attorneys for Defendant  
12 LLOYDS TSB BANK PLC

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 JOHN DUGAN, et al, individually and on  
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 LLOYDS TSB BANK PLC, a bank  
20 organized and existing under the laws of  
the United Kingdom,

21 Defendant.

Case No. 12-cv-02549 WHA

Class Action

**STIPULATED PROTECTIVE ORDER**

"

( 'QTFGT'

22 DAVID T. OSMENA et al, each  
23 individually and on behalf of all others  
similarly situated,

24 Plaintiffs,

25 v.

26 LLOYDS TSB BANK PLC, a bank  
27 organized and existing under the laws of  
the United Kingdom,

28 Defendant.

Case No. 12-cv-02937 WHA

Class Action

**STIPULATED PROTECTIVE ORDER**

"

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1  
2 **1. PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production of  
4 confidential, proprietary, or private information for which special protection from public  
5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
6 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
7 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
8 all disclosures or responses to discovery and that the protection it affords from public disclosure  
9 and use extends only to the limited information or items that are entitled to confidential treatment  
10 under the applicable legal principles. The parties further acknowledge that this Stipulated  
11 Protective Order does not entitle them to file confidential information under seal; Civil Local  
12 Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards  
13 that will be applied when a party seeks permission from the court to file material under seal.  
14

15  
16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
20 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
21 of Civil Procedure 26(c) or other applicable law.

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
23 well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or items that  
25 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
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1           2.5    Disclosure or Discovery Material: all items or information, regardless of the  
 2 medium or manner in which it is generated, stored, or maintained (including, among other things,  
 3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
 4 responses to discovery in this matter.

5           2.6    Expert: an individual with specialized knowledge or experience in a matter  
 6 pertinent to the litigation who (1) has been retained by Plaintiffs or their counsel to serve as an  
 7 Expert witness or as a consultant in this action, (2) is not currently employed by, retained by, or  
 8 otherwise providing services to Lloyds TSB Bank PLC or to its competitors. (A list of Lloyds  
 9 TSB Bank PLC's competitors is attached hereto as Exhibit A.); and (3) at the time of retention, is  
 10 not anticipated to become employed by, retained by, or otherwise providing services to Lloyds  
 11 TSB Bank PLC or to its competitors. Plaintiffs' counsel shall include in any engagement  
 12 agreement with an Expert a requirement that the Expert report to Plaintiffs' counsel as soon as he  
 13 or she anticipates becoming employed by, retained by, or otherwise providing services to Lloyds  
 14 TSB Bank PLC or its competitors. If, at any time after their retention as an Expert, the individual  
 15 becomes or anticipates becoming employed by, retained by or otherwise providing services to  
 16 Lloyds TSB Bank PLC or its competitors, Plaintiffs or their counsel shall immediately notify  
 17 Lloyds TSB Bank PLC of such change in circumstances and cease any further sharing of  
 18 materials designated as Confidential or Highly Confidential for 7 business days to allow Lloyds  
 19 TSB Bank PLC the opportunity to address the change in circumstances with the Court.

20           The parties expressly agree that in the event that an Expert's employer, partnership, and/or  
 21 other entity from which Expert derives a salary, commission, distribution or professional fees (or  
 22 individuals within expert's employer, partnership and/or other entity from which Expert derives a  
 23 salary, commission, distribution or professional fees, other than the Expert retained for this case)  
 24 is or becomes employed by, retained by or otherwise provide services to Lloyds TSB Bank PLC  
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 27  
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1 or its competitors, as long as the individual Expert is not employed by, retained by or otherwise  
 2 providing such services, the Expert is still able to receive materials designated as Confidential and  
 3 Highly Confidential subject to the terms and restrictions set forth in this Order or any terms  
 4 ordered by the Court. The parties also expressly agree that in the event that an Expert has been  
 5 retained through an organization or with the assistance of an organization (“Retained Expert”),  
 6 the fact that the organization may also provide referrals or other services to a competitor of  
 7 Lloyd’s TSB Bank PLC shall not be a basis for precluding any Retained Expert from being  
 8 provided access subject to the terms of this Protective Order to Confidential or Highly  
 9 Confidential information under this Protective Order.

11 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
 12 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
 13 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
 14 less restrictive means.

16 2.8 House Counsel: attorneys who are employees of a party to this action. House  
 17 Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal  
 19 entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this  
 22 action but are retained to represent or advise a party to this action and have appeared in this action  
 23 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

24 2.11 Party: any party to this action, including all of its officers, directors, employees,  
 25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 27 Material in this action.  
 28

1           2.13 Professional Vendors: persons or entities that provide litigation support services  
 2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
 3 organizing, storing, or retrieving data in any form or medium) and their employees, agents and  
 4 subcontractors.

5           2.14 Protected Material: any Disclosure or Discovery Material that is designated as  
 6 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
 7

8           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
 9 Producing Party.

### 10   **3.    SCOPE**

11           The protections conferred by this Stipulation and Order cover not only Protected Material  
 12 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
 13 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
 14 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

15           The protections conferred by this Stipulation and Order do not cover the following information:

16           (a) any information that is in the public domain at the time of disclosure to a Receiving Party or  
 17 becomes part of the public domain after its disclosure to a Receiving Party as a result of  
 18 publication not involving a violation of this Order, including becoming part of the public record  
 19 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
 20 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
 21 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
 22 of Protected Material at trial shall be governed by a separate agreement or order.  
 23

### 24   **4.    DURATION**

25           Even after final disposition of this litigation, the confidentiality obligations imposed by  
 26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
 27  
 28

1 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
 2 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
 3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 4 including the time limits for filing any motions or applications for extension of time pursuant to  
 5 applicable law.  
 6

## 7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
 9 or Non-Party that designates information or items for protection under this Order must take care  
 10 to limit any such designation to specific material that qualifies under the appropriate standards.  
 11 To the extent it is practical to do so, the Designating Party must designate for protection only  
 12 those parts of material, documents, items, or oral or written communications that qualify – so that  
 13 other portions of the material, documents, items, or communications for which protection is not  
 14 warranted are not swept unjustifiably within the ambit of this Order.  
 15

16 If it comes to a Designating Party's attention that information or items that it designated  
 17 for protection do not qualify for protection at all or do not qualify for the level of protection  
 18 initially asserted, that Designating Party must promptly notify all other parties that it is  
 19 withdrawing the mistaken designation.  
 20

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
 22 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
 23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
 24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (*e.g.*, paper or electronic documents, but  
 27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
 28

1 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 2 EYES ONLY” to each page that contains protected material. If only a portion or portions of the  
 3 material on a page qualifies for protection, the Producing Party also must clearly identify the  
 4 protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for  
 5 each portion, the level of protection being asserted.  
 6

7 A Party or Non-Party that makes original documents or materials available for inspection  
 8 need not designate them for protection until after the inspecting Party has indicated which  
 9 material it would like copied and produced. During the inspection and before the designation, all  
 10 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
 11 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
 12 copied and produced, the Producing Party must determine which documents, or portions thereof,  
 13 qualify for protection under this Order. Then, before producing the specified documents, the  
 14 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
 15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected  
 16 Material. If only a portion or portions of the material on a page qualifies for protection, the  
 17 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
 18 markings in the margins) and must specify, for each portion, the level of protection being  
 19 asserted.  
 20  
 21

22 (b) for information that qualifies for protection under Hong Kong’s Personal Data  
 23 (Privacy) Ordinance (Cap. 486) or similar law of the United Kingdom or of another nation, in  
 24 addition to the steps noted above, data relating directly or indirectly to the defendant’s customers  
 25 (other than lead plaintiffs) from which the identity of the individual can be ascertained must be  
 26 redacted from the relevant records and documents to eliminate all such identifiers (*e.g.* name,  
 27 telephone number, address, e-mail address, photo, identity card number, passport number) such  
 28

1 that the relevant records and documents are no longer considered to be containing personally  
2 identifying data.

3 (c) for testimony given in deposition or in other pretrial or trial proceedings, that  
4 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
5 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
6 impractical to identify separately each portion of testimony that is entitled to protection and it  
7 appears that substantial portions of the testimony may qualify for protection, the Designating  
8 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
9 a right to have up to 21 days to identify the specific portions of the testimony as to which  
10 protection is sought and to specify the level of protection being asserted. Only those portions of  
11 the testimony that are appropriately designated for protection within the 21 days shall be covered  
12 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
13 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
14 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
17 other proceeding to include Protected Material so that the other parties can ensure that only  
18 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
19 (Exhibit B) are present at those proceedings. The use of a document as an exhibit at a deposition  
20 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 Transcripts containing Protected Material shall have an obvious legend on the title page  
23 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
24 pages (including line numbers as appropriate) that have been designated as Protected Material and  
25



1 the level of protection being asserted by the Designating Party. The Designating Party shall  
 2 inform the court reporter of these requirements. Any transcript that is prepared before the  
 3 expiration of a 21-day period for designation shall be treated during that period as if it had been  
 4 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
 5 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
 6 actually designated.  
 7

8 (d) for information produced in some form other than documentary and for any  
 9 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
 10 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
 11 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions  
 12 of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
 13 identify the protected portion(s) and specify the level of protection being asserted.  
 14

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 16 designate qualified information or items does not, standing alone, waive the Designating Party’s  
 17 right to secure protection under this Order for such material. Upon timely correction of a  
 18 designation, the Receiving Party must make reasonable efforts to assure that the material is  
 19 treated in accordance with the provisions of this Order.  
 20

## 21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS AND DESIGNATIONS** **OF COMPETITORS**

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 23 confidentiality or the designation of an entity as a competitor of Lloyds TSB Bank PLC at any  
 24 time. Unless a prompt challenge to a Designating Party’s designation is necessary to avoid  
 25 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or  
 26 delay of the litigation, a Party does not waive its right to challenge a designation by electing not  
 27 to mount a challenge promptly after the original designation is disclosed.  
 28

1           6.2    Meet and Confer. The Challenging Party shall initiate the dispute resolution  
 2 process by providing written notice of each designation it is challenging and describing the basis  
 3 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
 4 notice must recite that the challenge is being made in accordance with this specific paragraph of  
 5 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
 6 begin the process by conferring directly (in voice to voice dialogue; other forms of  
 7 communication are not sufficient) within 14 days of the date of service of notice. In conferring,  
 8 the Challenging Party must explain the basis for its belief that the designation was not proper and  
 9 must give the Designating Party an opportunity to review the designated material or competitor,  
 10 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis  
 11 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge  
 12 process only if it has engaged in this meet and confer process first or establishes that the  
 13 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

14           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
 15 intervention, the Designating Party shall file and serve a motion to retain confidentiality or  
 16 competitor status under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and  
 17 General Order 62, if applicable) within 21 days of the initial notice of challenge or within 14 days  
 18 of the parties agreeing that the meet and confer process will not resolve their dispute, whichever  
 19 is earlier. Each such motion must be accompanied by a competent declaration affirming that the  
 20 movant has complied with the meet and confer requirements imposed in the preceding paragraph.  
 21 Failure by the Designating Party to make such a motion including the required declaration within  
 22 21 days (or 14 days, if applicable) shall automatically waive the designation for each challenged  
 23 designation. In addition, the Challenging Party may file a motion challenging a designation at  
 24 any time if there is good cause for doing so, including a challenge to the designation of a  
 25  
 26  
 27  
 28

1 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must  
 2 be accompanied by a competent declaration affirming that the movant has complied with the meet  
 3 and confer requirements imposed by the preceding paragraph.

4 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 5 Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose  
 6 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 7 sanctions. Unless the Designating Party has waived the designation by failing to file a motion to  
 8 retain confidentiality and/or competitor status as described above, all parties shall continue to  
 9 afford the material in question the level of protection to which it is entitled under the Producing  
 10 Party's designation and/or continue to treat the identified entity as a competitor of Lloyds TSB  
 11 Bank PLC until the court rules on the challenge.

## 12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

13  
 14  
 15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
 16 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
 18 to the categories of persons and under the conditions described in this Order. When the litigation  
 19 has been terminated, a Receiving Party must comply with the provisions of section 13 below  
 20 (FINAL DISPOSITION).

21  
 22 Protected Material must be stored and maintained by a Receiving Party at a location and  
 23 in a secure manner that ensures that access is limited to the persons authorized under this Order.  
 24 The Receiving Party must store any electronic Protected Material in password-protected form.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Other than  
 26 CONFIDENTIAL information that qualifies for protection under Hong Kong's Personal Data  
 27 (Privacy) Ordinance (Cap. 486) or similar law of the United Kingdom or of another nation, which  
 28

1 must be redacted pursuant to this Stipulated Protective Order, and unless otherwise ordered by the  
2 court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
3 information or item designated "CONFIDENTIAL" only to:

4 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
7 Bound" that is attached hereto as Exhibit B

8 (b) the officers, directors, and employees (including House Counsel) of the  
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
10 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit B);

11 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
12 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
13 Agreement to Be Bound" (Exhibit B);

14 (d) the court and its personnel;

15 (e) court reporters and their staff, professional jury or trial consultants, and  
16 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
17 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit B);

18 (f) during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
20 (Exhibit B), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
21 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
22 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
23 under this Stipulated Protective Order.

24 (g) the author or recipient of a document containing the information or a custodian  
25  
26  
27  
28

1 or other person who otherwise possessed or knew the information.

2           7.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
3 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
4 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

6                   (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
8 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” that is attached hereto as Exhibit B;

10                   (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
11 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
12 (Exhibit B), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been  
13 followed;

14                   (c) the court and its personnel;

15                   (d) court reporters and their staff, professional jury or trial consultants, and  
16 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit B); and

18                   (e) the author or recipient of a document containing the information or a custodian  
19 or other person who otherwise possessed or knew the information.

20           7.4     Procedures for Approving or Objecting to Disclosure of “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House  
22 Counsel.

23                   (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
24 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
25  
26  
27  
28

1 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
2 EYES ONLY” pursuant to paragraph 7.3 first must make a written request to the Designating  
3 Party that identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert. .  
5

6 (b) A Party that makes a request and provides the information specified in the  
7 preceding respective paragraph may disclose the subject Protected Material to the identified  
8 Expert unless, within 14 days of delivering the request, the Party receives a written objection  
9 from the Designating Party. Any such objection must set forth in detail the grounds on which it is  
10 based.

11 (c) A Party that receives a timely written objection must meet and confer with the  
12 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
13 agreement within seven days of the written objection. If no agreement is reached, the Party  
14 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
15 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking  
16 permission from the court to do so. Any such motion must describe the circumstances with  
17 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,  
18 assess the risk of harm that the disclosure would entail, and suggest any additional means that  
19 could be used to reduce that risk. In addition, any such motion must be accompanied by a  
20 competent declaration describing the parties’ efforts to resolve the matter by agreement (*i.e.*, the  
21 extent and the content of the meet and confer discussions) and setting forth the reasons advanced  
22 by the Designating Party for its refusal to approve the disclosure.  
23  
24

25 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
26 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
27 outweighs the Receiving Party’s need to disclose the Protected Material to the Expert.  
28

1     **8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 2     **OTHER LITIGATION**

3             If a Party is served with a subpoena or a court order issued in other litigation that compels  
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
 5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

6             (a) promptly notify in writing the Designating Party. Such notification shall  
 7 include a copy of the subpoena or court order;

8             (b) promptly notify in writing the party who caused the subpoena or order to issue  
 9 in the other litigation that some or all of the material covered by the subpoena or order is subject  
 10 to this Protective Order. Such notification shall include a copy of this Stipulated Protective  
 11 Order; and

12             (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 13 Designating Party whose Protected Material may be affected.  
 14

15             If the Designating Party timely seeks a protective order, the Party served with the  
 16 subpoena or court order shall not produce any information designated in this action as  
 17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
 18 determination by the court from which the subpoena or order issued, unless the Party has obtained  
 19 the Designating Party’s permission. The Designating Party shall bear the burden and expense of  
 20 seeking protection in that court of its confidential material – and nothing in these provisions  
 21 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a  
 22 lawful directive from another court.  
 23

24     **9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
 25     **THIS LITIGATION**

26             (a)     The terms of this Order are applicable to information produced by a Non-  
 27 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 28

ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

#### **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective



Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit B.

**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

If information is produced in discovery that is subject to a claim of privilege or of protection, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly sequester, return or destroy the specific information and any copies it has, and may not use or disclose the information until the claim is resolved. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

**12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

### 13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

1 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
2 product, and consultant and expert work product, even if such materials contain Protected  
3 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
4 this Protective Order as set forth in Section 4 (DURATION).  
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7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8  
9 DATED: \_\_\_\_\_ /s/ Libretta P. Stennes  
Attorneys for Plaintiffs John Dugan et al

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11 DATED: \_\_\_\_\_ /s/ Peter J. Bezek  
Attorneys for Plaintiffs David T. Osmena et al

12  
13 DATED: \_\_\_\_\_ /s/ Mark C. Dosker  
Attorneys for Defendant Lloyds TSB Bank plc

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15  
16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 DATED: \_\_\_\_\_   
18 United States Magistrate Judge

**EXHIBIT A**  
**LIST OF COMPETITORS**

<u><b>UK</b></u>	<u><b>USA</b></u>	<u><b>Canada</b></u>	<u><b>France</b></u>	<u><b>Spain</b></u>
HSBC	HSBC	CIBC	Barclays	Barclays
Barclays	Mellon	HSBC	BNP Paribas	RBSI
RBSI	Washington Mutual	Scotiabank	Credit Agricole	Santander
Santander			HSBC	Standard Chartered
			Standard Chartered	
<u><b>Australia</b></u>	<u><b>New Zealand</b></u>	<u><b>Dubai</b></u>	<u><b>Hong Kong</b></u>	<u><b>Singapore</b></u>
ANZ	ANZ	Barclays	Hang Seng	DBS
NAB	NAB	Mashreqbank	HSBC	HSBC
St. George Bank	Westpac	NBD	ICBC	NAB
Westpac	National Bank of New Zealand	Standard Chartered	NAB HK	UOB
		HSBC	Standard Chartered	Standard Chartered
		ANZ	Bank of China	
			Bank of Communications	
<u><b>Portugal</b></u>				
HSBC				

**EXHIBIT B****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the cases of *John Dugan, Aurora Dugan and Matthew Tapscott v. Lloyds TSB Bank plc*, United States District Court, Northern District of California, Case No. CV 12-02549 PSG and *David T. Osmena and Patricia Hogan-Osmena v. Lloyds TSB Bank plc*, United States District Court, Northern District of California, Case No. CV 12-02937 WHA. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order including this Acknowledgement and Agreement to be Bound, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

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Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]